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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8055/2012 & CM Nos.20089/2012 & 26208/2017**

ASHOK KUMAR SONI

..... Petitioner

Through: Mr S. S. Singhal, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Jayant Tripathi and Mr Dinesh
Dahiya, Advocates for R-1/ASI.
Mr Jagdish Sagar, Advocate for R-
2/SDMC.
SI Sohan Lal, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.02.2018

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent nos. 1 to 3 to take immediate action to stop construction activities on the property bearing no. 1088A, Ward No. 1, Near Gurudwara, Mehrauli, New Delhi (hereafter 'the said property'). The petitioner also prayed for a direction restraining respondent nos. 4 and 5 to carry out any construction activity.
2. The petitioner claims that he is the rightful owner of the said property and asserts that respondent nos. 4 and 5 have no right, title or interest in the same. However, it is not necessary to examine the said controversy in this petition.

3. The petitioner had approached this Court alleging that respondent nos. 4 and 5 are raising construction on the said property without any sanction or authority. It was also stated that the said property falls within the radius of 100 meters of a centrally protected monument, *Gandhak ki Baoli*, and therefore, no construction is permissible on the said property in terms of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

4. The learned counsel appearing for respondent no.1 (Archaeological Survey of India - ASI) confirms that the said property is within the distance of 100 meters of the centrally protected monument and, therefore, any construction on the said property is illegal.

5. He also submitted that SDMC had sent a letter dated 08.03.2013 informing ASI that demolition action had been taken in respect of the said property on 17.01.2013. SDMC had also requested ASI to take action in respect of the said property.

6. SDMC had filed a status report dated 22.04.2013 indicating that certain demolition action was undertaken in respect of the said property on 17.01.2013, 25.02.2013 and 17.04.2013. Further, on 23.04.2013, the learned counsel appearing for SDMC had stated that further demolition was fixed for 02.05.2013. On that date - that is on 23.04.2013 - this Court passed an order directing SDMC to carry out demolition in accordance with law and further directed respondent no.3 to deploy adequate force if a request for police assistance was made.

7. SDMC also filed an affidavit dated 12.09.2013 affirming that SDMC had taken demolition action in respect of the said property on 02.05.2013

during which it had demolished one slab/panel of the third floor and had also demolished the brick walls at the fourth floor. It was further affirmed that the said property had been sealed at the ground floor at four points and was currently lying sealed.

8. On 25.03.2014, the learned counsel appearing for SDMC had reported that further unauthorised construction had been raised by respondent nos. 4 and 5 and an FIR had been filed under Section 188 IPC read with Section 461 of DMC Act with PS Mehrauli. In view of the same, the SHO, PS Mehrauli was directed to investigate the matter and take action in accordance with law.

9. SDMC filed another status report affirmed on 02.07.2014 stating that the owner / builder of the said property had occupied the same after restoring the demolished portion and after tampering with the seals affixed by the department. It was further stated that the said property had been further demolished on 31.03.2014 and it was re-sealed on 05.06.2014 after getting the property vacated through police force.

10. On 07.07.2014, it was contended on behalf of the petitioner that despite sealing the said property, four shops were still running in the said property and there was access to the building from one of the shops. In view of the aforesaid submission, this Court appointed a Local Commissioner to inspect the said property and file a report. The Local Commissioner filed a report of his visit to the site.

11. Thereafter, the SDMC filed another status report dated 27.08.2014 wherein it was affirmed that the four shops on the ground floor were sealed

by the department on 09.07.2014. It was further affirmed that another demolition programme had been planned for 10.07.2014 during which three of the RCC Roof Panels were demolished at the first floor including cutting of the reinforcement. The building was de-sealed as belongings of the occupants were lying inside the building and it was subsequently re-sealed. It was also pointed out that an application had been filed by respondent no.4 for regularisation of the existing structure at the said property.

12. On 28.08.2014, this Court directed the SDMC to take a final view on the application for regularisation filed by respondent no.4 within a period of six weeks and if the application was rejected, SDMC was directed to complete the demolition of the said property within a period of two weeks thereafter.

13. On 13.01.2015, this Court observed that despite, assurances given to the Court by the SDMC on various dates, the demolition of the non-compoundable portions of the structure raised on the said property had not been carried out. The Court also observed that there was another aspect of the matter which required consideration for taking action against the officers, who are charged with responsibility for monitoring and regulating the construction in the area. In that aspect, this Court had passed the following order:-

“6. There is another aspect of the matter, which needs consideration. I am informed by the learned counsel for respondent no.4 that the aforementioned building was constructed in 2011-2012. As to when the building got constructed, is a matter which, respondent no.2 will verify.

6.1 Notwithstanding the above, respondent no.2 shall carry out an enquiry and ascertain as to how the structure came up without the plans being sanctioned. The enquiry shall also ascertain as to the officers who, were charged with the responsibility of monitoring and regulating construction in the area, in which, the aforementioned building is located. This enquiry will be carried out by the Commissioner, South Delhi Municipal Corporation (SDMC). If a prima facie case of dereliction of duty is established, the officer concerned will be issued a show cause notice and his stand will, accordingly, be ascertained. Responsibility, if any, will be fixed in the matter, after following due process. The Commissioner will file his report in court before the next date of hearing.”

14. In compliance with the order passed by this Court, an affidavit dated 10.04.2015 has been filed on behalf of the SDMC, *inter alia*, affirming as under:-

“4. That in pursuance of said directions, an enquiry has been conducted in the matter. The enquiry revealed regarding booking of unauthorized construction and taking the requisite punitive actions of taking demolition actions on different occasions and sealing action, sending letter to the Police Authorities, letters for dis-connection of water and electricity to Delhi Jal Board and Power Supply Distribution Company respectively, Revenue Department for not registering the property. Considering the facts and reports of two matter, the competent authority has issued recordable Warning to the erring officials for not taking effective complete demolition action in the property, and to be careful in further in performing the statutory duties. The said Warning has been placed in the personal-files of these officials.”

15. The petitioner has now filed an application (CM No. 26208/2017) enclosing photographs, which indicate that further construction has been raised on the ground floor of the said property. The petitioner has also

enclosed a letter dated 02.01.2017 sent by the SDMC indicating that the said property had been de-sealed on 28.12.2016.

16. Clearly, no order for de-sealing the said property could be passed without obtaining orders from this Court. The matter regarding unauthorised construction was pending before this Court and as noticed above, several orders have been passed from time to time with regard to the said property. This Court is, *prima facie*, of the view that the action on the part of SDMC in de-sealing the property amounts to overreaching the process of this Court and the same cannot be countenanced.

17. Mr Sagar, the learned counsel appearing for SDMC contended that in terms of the National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011, the building raised on the said property could not be demolished. The said contention is unmerited. The photographs annexed with the application indicate that the fresh construction has been raised on the ground floor after the said property had been sealed. Such construction is clearly not protected under the said Act.

18. In view of the above, the SDMC is directed to forthwith take steps to demolish the additional construction raised on the said property as is clearly indicated in the photographs annexed with the application (CM 26208/2017). Any additional construction raised beyond what is indicated in the photographs dated 29.12.2014 (at page 242 of the Paper book) would be removed by the SDMC immediately. Further, the said property is directed to be re-sealed after evicting the occupants in order to restore the condition as was obtaining on 09.01.2015 (as indicated in the status report dated

09.01.2015).

19. As contended by the learned counsel for ASI, the said property in question falls within the prohibited zone and, therefore, no construction is/or was permissible. In this view, the SDMC shall ensure that the said property continues to remain sealed and is not permitted to be occupied for any purpose.

20. The Commissioner, SDMC shall ensure that an affidavit of compliance is filed within a period of six weeks from today.

21. The petition and the applications are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

FEBRUARY 15, 2018
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